

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

Board of Regents, The University of Texas
System, and 3D Systems, Inc.,

Plaintiffs,

v.

EOS GmbH Electro Optical Systems,

Defendant.

Civil Action No. A03 CA 113SS

**DECLARATION OF PHILIP E. COOK IN SUPPORT OF PLAINTIFF AND
COUNTERCLAIM DEFENDANT 3D SYSTEMS, INC.'S MOTION
TO SEVER AND TRANSFER COUNTS I THROUGH IV
OF EOS'S FIRST AMENDED COUNTERCLAIMS**

I, Philip E. Cook, declare that:

1. I am a partner with the law firm of Jones Day, admitted *pro hac vice* and counsel of record for plaintiffs Board of Regents, The University of Texas System ("UT"), and 3D Systems, Inc. ("3D Systems") in this action. I have personal knowledge of the facts stated herein and if called as a witness, could and would competently testify hereto.

2. On February 3, 2003, 3D Systems filed with the United States District Court for the Central District of California, in the action entitled *EOS GmbH Electro Optical Systems v. DTM Corp. et al.*, Case No. SACV 00-1230 DOC (MLGx) (the "California Action"), an Appendix of Evidence Filed in Support of 3D Systems' Motion for Partial Summary Judgment on License Agreement Interpretation ("Appendix of Evidence"). The Appendix of Evidence included a February 3, 2003 declaration of former DTM employee Michael A. Ervin, Ph.D, and a

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January 31, 2003 declaration of 3D Systems' former general counsel, A. Sidney Alpert. True copies of those declarations of Dr. Ervin and Mr. Alpert are attached as Exhibits 1 and 3, respectively.

3. On February 25, 2003, EOS's CEO, Hans Langer, was deposed in the California Action. Attached as Exhibit 2 are true copies of the cover page, pages 563-64, and the reporter's certification of the transcript from Mr. Langer's February 25, 2003 deposition.

4. On or about January 30, 2002, EOS filed its Reply to 3D Systems, Inc.'s Counterclaims and its Counter-Counterclaims Against 3D Systems, Inc. ("Counter-Counterclaims") in the California Action, and attached portions of the August 27, 1997 Settlement, Purchase and Transfer Agreement ("Settlement Agreement") between 3D Systems and EOS as Exhibit B to the Counter-Counterclaims. A true copy of that exhibit, which contains relevant portions of the Settlement Agreement, is attached as Exhibit 4.

5. In the Appendix of Evidence referred to in paragraph 2 above, the August 27, 1997 License Agreement ("License Agreement") between 3D Systems and EOS was attached as Exhibit B to the January 31, 2003 Declaration of Mr. Alpert. A true copy of that License Agreement is attached as Exhibit 5.

5. On or about November 16, 2001, EOS filed its Motion for Leave to File a Fourth Amended Complaint in the California Action. EOS attached its Proposed Fourth Amended Complaint as Exhibit A to its Memorandum in Support of Motion for Leave to File a Fourth Amended Complaint. A true copy of EOS's Proposed Fourth Amended Complaint is attached as Exhibit 6.

6. A true copy of the February 6, 2002 Order from the California court in the California Action is attached as Exhibit 7. That Order denied Plaintiff's Motion for Leave to File an Amended Complaint, among other things.

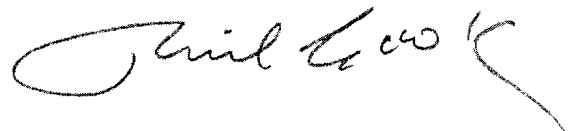
7. On or about January 30, 2002, EOS filed its Reply to 3D Systems, Inc.'s Counterclaims and its Counter-Counterclaims Against 3D Systems, Inc. ("Counter-Counterclaims") in the California Action. A true copy of the Counter-Counterclaims is attached as Exhibit 8.

8. A true copy of the March 18, 2002 Order from the California court in the California Action is attached as Exhibit 9. That Order granted 3D Systems' motion to strike EOS's Counter-Counterclaims, among other things.¹

9. For the Court's convenience, a true copy of EOS's Notice of Filing Answer and First Amended Counterclaims, which was filed in this action on July 17, 2003, is attached as Exhibit 10.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of November, 2003, at Los Angeles, California.



Philip E. Cook

¹ 3D Systems respectfully requests that the Court take judicial notice of Exhibits 6 through 9 pursuant to Federal Rule of Evidence 201, as pleadings filed and orders issued by the California court in the California Action. Federal Rule of Evidence 201 provides that "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served in the following manner to the following counsel of record on this 20th day of November, 2003.

Thomas H. Watkins
Albert A. Carrion, Jr.
HILGERS & WATKINS P.C.
98 San Jacinto Boulevard
San Jacinto Center, Suite 1300
Austin, Texas 78701
(512)476-4716
(512) 476-5139 Facsimile

Via Certified Mail

Michael H. Baniak
Michael D. Gannon
BANIAK PIKE & GANNON
150 N. Wacker Drive, Suite 1200
Chicago, Illinois 60606
(312) 673-0360
(312) 673-0361 Facsimile

Via Federal Express and Electronic Mail

Attorneys for Defendant
EOS GMBH ELECTRO OPTICAL SYSTEMS


ELIZABETH J. BROWN FORE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NOTICE OF DOCUMENT(S) NOT IMAGED

Civil Case No. A:03-CA-113 SS

Board of Regents, The University of Texas Systems

VS.

EOS GmbH Electro Optical Systems

Attachments to

Document #: 112

Description: Declaration of Philip E. Cook in Support of
Plaintiffs' Motion to Sever and Transfer
Counts I through IV of EOS's First
Amended Counterclaims

Filed By: Plaintiffs

File Date: 11/20/03